

MAR 27 2006

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5538

DATE COMPLAINT FILED: Sept. 20, 2004

DATE OF NOTIFICATION: Sept. 27, 2004

LAST RESPONSE RECEIVED: Nov. 12, 2004

DATE ACTIVATED: Sept. 12, 2005

EXPIRATION OF SOL: Mar. 3, 2009

COMPLAINANT:

Alexander B. Achmat

RESPONDENTS:

Friends of Gabbard and Alison Riggs, in her official
capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(13)(A)

2 U.S.C. § 432(i)

2 U.S.C. § 434(b)

2 U.S.C. § 441f

11 C.F.R. § 100.12

11 C.F.R. § 104.7

11 C.F.R. § 111.4(d)(2)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Friends of Gabbard accepted contributions in the name of another and submitted false reports. The Complaint contains only speculation concerning contributions in the name of another, while the Response provides comprehensive denials, including relevant affidavits, contradicting such allegations. The Response demonstrates that this committee properly identified its contributors, with minor exceptions. We therefore recommend that the Commission find no reason to believe that the Respondents committed the alleged violations and close the file in this matter.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Friends of Gabbard (the "Committee"), was the authorized committee of Mike Gabbard
4 for the 2004 primary election for the U.S. House of Representatives in Hawaii's Second
5 District.¹ The Complaint (a three-page document with a 74-page appendix²) suggests that the
6 Committee received contributions in the name of another because certain contributors worked for
7 the same employer, shared business or religious interests, shared the same mailing address or
8 property interests, or lacked the means to contribute. *See* Compl. at 2 and Compl. App. at 70-74.
9 The Complaint also alleges that the Committee misreported name, address, employer and/or
10 occupation information regarding 11 individuals. Compl. App. at 13-68.

11 The Committee submitted a detailed (159-page) response to the Complaint.³ The
12 Response includes copies of "contribution forms" (*i.e.*, "donor cards") from contributors
13 mentioned in the Complaint, Resp. at 8, 24-123, and affidavits from those contributors
14 potentially implicated by the conduit contribution allegations. Resp. at 6, 125-40.

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¹ After winning the Republican primary on September 18, 2004, Mr. Gabbard changed the name of his committee to Gabbard for Congress. *See* Committee Statement of Organization (amended Sept. 26, 2004). Alison Riggs was (and remains) the treasurer of the Committee.

² The appendix consists of four sections: (1) an index of Committee reports (dated Sept. 15, 2004); (2) two printouts of Committee contributors, compiled by CampaignMoney.com (with handwritten annotations) (dated Aug. 15 and Sept. 15, 2004); (3) a section entitled "Complaint Part 1," alleging reporting violations; and (4) a section entitled "Complaint Part 2," alleging contributions in the name of another.

³ The Committee claims that the Complainant has harassed the candidate because of the latter's opposition to Hawaii's "same sex marriage" movement. Resp. at 2. Respondents also contend that the Complainant filed previous state election law complaints, which were dismissed, and that he has physically harassed Committee campaign workers. *Id.* at 2, 4.

B. Alleged Contributions in the Name of Another

The allegations of contributions in the name of another are meritless.⁴ The Complaint alleges that "suspicious data" point to an "operation ... undertaken to use individuals as conduits." Compl. at 3. The Complaint's "suspicious data" can be categorized broadly as allegations that certain contributors: (1) work for the same employer or share business or religious interests; (2) lack the means to make contributions; or (3) share the same address or property interests. *Id.* at 2; Compl. App. at 69-74. The allegation that certain contributors lacked the means to make contributions can be further subdivided into allegations that there was "a pattern of 'large donations' from 'retired'" individuals, Compl. at 2 and Compl. App. at 71-73; that there was a "significant number" of contributors with "'unverifiable' employment and occupation" information such as "homemaker" and "self-employed," Compl. at 2 and Compl. App. at 70, 71-74; that "many people of 'modest' occupations"—such as "caregiver," "fitness instructor/artist," "landscaper," "contractor," "secretarial service," "jewelry maker," "acting coach," and "carpenter"—had made "large donations," Compl. at 2 and Compl. App. at 70-74; and that certain contributors live in "economically strapped" localities, Compl. App. at 69-70, 72-74. However, although the appendix to the Complaint highlights certain contributors whose identifying information allegedly fits one of these categories, the text of the Complaint itself identifies no specific contribution that is alleged to have been reimbursed, no specific alleged conduits, nor any specific alleged true sources of the supposedly reimbursed contributions.

⁴ The Federal Election Campaign Act of 1971, as amended (the "Act") provides that no person shall make a contribution in the name of another and no committee shall knowingly accept such a contribution. See 2 U.S.C. § 441f.

1 The Commission may find reason to believe if a complaint "sets forth sufficient specific
2 facts, which, if proven true, would constitute a violation of the [Act]." MUR 4960 (Hillary
3 Rodham Clinton), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and
4 Thomas (citing 11 C.F.R. § 111.4(d)(2)). However, in reviewing a matter at the reason to
5 believe stage, "[u]nwarranted legal conclusions from asserted facts ... or mere speculation ...
6 will not be accepted as true." *Id.* Specifically, where it is alleged that employees of a common
7 employer have made contributions, the mere fact that "several employees of the same company
make contributions even on the same day" is not sufficient to draw an inference that the
contributions were reimbursed. MUR 4850 (Deloitte & Touche), Statement of Reasons of
Commissioners Mason, Thomas and Wold.

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14 The Complainant's allegations that contributions were reimbursed based merely on their
15 reported addresses, religions, or occupations are precisely the sort of "mere speculation" that will
16 not sustain a finding of reason to believe. People who share the same address, or business or
17 property interests, or are members of the same religious congregation frequently make
18 contributions, without those contributions having been reimbursed. Similarly, retired persons,
19 the self-employed, and homemakers also frequently make contributions that are not reimbursed.
20 And Complainant's conclusions that persons of certain specific occupations or who live in
21 particular localities must not have the means to make contributions, even relatively large ones,
22 are themselves entirely speculative; to leap from those conclusions to conclusions that those
23 persons' contributions must have been reimbursed is to pile speculation upon speculation. As for

1 the allegations that persons with common employers must have made reimbursed contributions,
2 we have only been able even to infer the identities of two such individuals: Alison and Robert
3 Riggs, both of whom work for Mr. Gabbard in his current local government position, and both of
4 whose statements that they made the contributions from their own funds are included in the
5 response, along with an affidavit from Alison Riggs.⁵ Resp. at 90, 91, 134. Beyond this
6 speculation, the Complaint offers nothing, not even so much as allegations that any specific
7 contributions were reimbursed. In short, these speculative allegations do not support a finding of
reason to believe.

C. Alleged Reporting Violations

1 The Complaint's allegations that the Committee violated reporting requirements relating
2 to 11 individual contributors are essentially baseless.⁶ The Complaint alleges that nine
3 individuals had erroneous occupation and name of employer information, four had incomplete
4 name information, and two had incorrect address information.⁷ However, the Committee's
5 reports were either consistent with the information that the contributors provided to the
6 Committee, properly amended by the Committee when it received new information, or reflected
7 *de minimis* errors. Therefore, the available information does not support a reason to believe
recommendation that the Committee violated the Act's reporting requirements.

⁵ Because the Complaint did not specifically identify any conduits, none were notified. Also, while the Response included affidavits from some contributors, Resp. at 125-40, in the absence of any more specific allegations about which contributions were reimbursed, the Respondents could not have been expected to obtain on their own affidavits from all the contributors who potentially fell into one of Complainant's categories.

⁶ For each individual contributing more than \$200 in a calendar year, a political committee must disclose his or her name, mailing address, and occupation, as well as the name of his or her employer. 2 U.S.C. §§ 431(13)(A) and 434(b)(3)(A).

⁷ Some of the 11 contributors allegedly fell into more than one reporting category.

1 In all but two of the nine instances of alleged misreporting of occupation or name of
2 employer, the information was either that reported by the contributor on the donor card or was
3 otherwise correct. The donor cards appear to be consistent with the "best efforts" safe harbor.⁸
4 By reporting the information received on them from the donors, the Committee made best efforts
5 to obtain, maintain and submit the information, and therefore the Committee did not violate the
6 Act's reporting requirements. In one of the two remaining instances, the Committee asserts that
7 it reported information given to it orally by the contributor, but that it later received a donor card
8 from him containing different information, so it amended its report to disclose the new
9 information. Resp. at 12 (information regarding Joe Tully). The Committee therefore complied
10 with the "best efforts" safe harbor. See Committee Pre-Primary Report (amended Oct. 15,
11 2004); 11 C.F.R. § 104.7(b)(4).

12 In the last instance, the contribution form of contributor Linda P. Harvey (attached to the
13 Response) describes her occupation as "writer" and her employer as "self." Resp. at 128. The
14 Committee reported her occupation as "homemaker," see Committee Pre-Primary Report at 16,
15 and stated that same information in the Response. Resp. at 12. This information is not
16 necessarily inconsistent. Nevertheless, even if this reporting is considered erroneous, we believe

⁸ Any report of a committee shall be considered in compliance with the Act when the committee treasurer can show that "best efforts" have been used to obtain, maintain, and submit the required contributor information. 2 U.S.C. § 432(i). The Commission's regulations provide a safe harbor by which a committee may demonstrate that it has made "best efforts" to report such information. 11 C.F.R. § 104.7(b). To avail itself of the safe harbor, a committee must demonstrate that it clearly requested contributor information, made at least one documented request to the contributor to obtain any missing information, reported any contributor information otherwise available to the committee, and amended its reports after receiving any such information. *Id.* The Commission has applied the "best efforts" analysis in the context of both missing and incorrect information. See 11 C.F.R. § 104.7(b)(2); compare MUR 3979 (Santorum '94) (committee reports omitting contributors' occupation and employer information) with MUR 5279 (Bradley/Kushner) (responses to matching fund letters revealed employer and address information different from reported information).

1 that the single unexplained misidentification of a contributor's occupation and employer does not
2 warrant the exercise of enforcement resources to pursue this issue.⁹

3 Regarding alleged incomplete name information, the Complaint asserts that the
4 Committee failed to report the first names of two contributors (Kunti Bull and Chaitanya
5 McGuire). However, the contribution forms for these individuals only contained their first
6 initials; the Committee therefore satisfied the "best efforts" requirements.¹⁰ The Complaint also
7 alleges that the Committee failed to report the middle initials of Alison Riggs and Joe Tully.
8 Contrary to Respondents' assertions, the "identification" of an individual includes his or her
9 "middle name or initial, if available...." 11 C.F.R. § 100.12. Although these middle initials
10 were "available" on these individuals' contribution forms, we do not recommend pursuing such
11 minimal activity as reporting violations.

12 With respect to address information, the Complainant infers that the Committee
13 incorrectly reported the address of Chris Harvey because the address disclosed in connection
14 with his contribution differs from the address disclosed in a subsequent report for a disbursement
15 made by the Committee to Mr. Harvey. Compl. at 49-51. However, the Committee explains that
16 Mr. Harvey moved residences between these reporting dates. Resp. at 15, 133. The alleged
17 misreporting of another contributor's address (Linda Harvey) is rebutted by her affidavit. See
18 Compl. App. at 26-30 and Resp. at 128.

⁹ The present matter lacks the type of additional information that might otherwise support a reason to believe recommendation. For example, in MUR 5335R (Davis), a committee identified a young child as a "homemaker," other family members made maximum contributions on the same day, and no family member responded to the complaint.

1 In summary, the Complaint's reporting violation allegations are either rebutted by the
2 Response or are *de minimis*. We therefore recommend that the Commission find no reason to
3 believe that the Respondents violated 2 U.S.C. § 434(b), but that the closing letter to the
4 Committee contain a request to amend its reports.

5 **III. RECOMMENDATIONS**

- 6 1. Find no reason to believe that Friends of Gabbard and Alison Riggs, in her official
7 capacity as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) or 441f.
8 2. Approve the appropriate letters.
9 3. Close the file.

Lawrence H. Norton
General Counsel

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16 Date 3/24/06

BY: 

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